


Exhibit 5

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U.S. ATTORNEY
W.D. TENNESSEE
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY  D.C.
2005 JUL 29 AM 9:44

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

UNITED STATE OF AMERICA,

Plaintiff,

vs.

MICHAEL A. SHORT.

Defendant.

No. 2:04cr-20032-MI

MOTION TO MODIFY SENTENCE

Comes now, the Defendant, Michael A. Short, by and through his attorney of record, Gregory D. Cotton, and respectfully moves this Honorable Court to modify the sentence imposed on this Defendant by this Honorable Court, on January 21, 2005, and as grounds therefore would state as follows:

1. That on January 21, 2005, this Court recommended, as a part of its sentence in this cause "that the Defendant be allowed to participate in the 500 hour intensive drug rehabilitation treatment program while incarcerated."
2. That the sentencing worksheet that was prepared by the U.S. Probation Office in Memphis, Tennessee, pursuant to Federal Sentencing Guidelines Manual (Edition 2003) provided that the offense level of the Defendant, Michael A. Short, was enhanced by two (2) points under Guideline 2D1.1(b)(1) Possession of a Firearm.
3. That nowhere in the judgment in this case entered by this Court on January 21, 2005 is there any reference to this enhancement factor.

4. That the Federal Sentencing Guidelines have been declared to be unconstitutional. (See Blakely v. Washington, USC 02-1632, decided June 24, 2004); (U.S. v. Croxford, U.S. District Court for the District of Utah, Central Division No. 2:02-CR-00302PGC, decided June 29, 2004); United State of America v. Tiffany Harris Montgomery (2004 FED. APP. 02216, 6th Cr.).

5. That the Guideline requirement on upward enhancement of this Defendant's sentencing range without a jury determination is in violation of the United States Constitution.

6. That this Defendant, Michael A. Short, is eligible to participate in the 500 hour intensive drug rehabilitation program under **18 USC 3621(b)** which also provides for early release upon successful completion of the 500-hour intensive drug rehabilitation program.

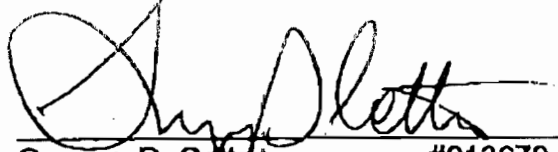
7. That the Defendant, Michael A. Short, has been informed that although he is allowed to participate in the while incarcerated and has in fact been accepted into and participating in the program while incarcerated at the Federal Prison Camp at Maxwell Air Force Base, he will not qualify for early release as provided for by **18 USC 3621(b)** because the Director of the Federal Bureau of Prisons considers those convicted of gun charges ineligible for early release under **18 USC 3521(b)** based on his criteria as Director of the Federal Bureau of Prisons and that is his policy

8. That the Director of the Federal Bureau of Prisons is acting in violation of **18 USC 3621(b)**.

9. That Michael Short was not convicted of a gun crime.

WHEREFORE, the Defendant moves this Court for an Order modifying the sentence to provide that he be released upon the successful completion of the 500-hour intensive drug rehabilitation program.

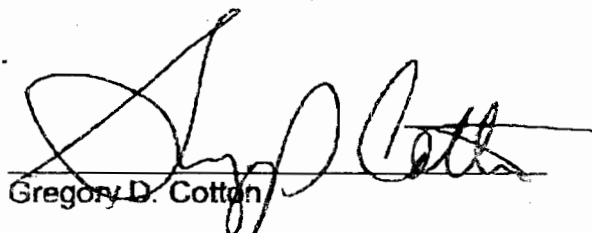
Respectfully submitted,



Gregory D. Cotton #013679
Attorney for Michael A. Short
6263 Poplar Avenue, Suite 1032
Memphis, Tennessee 38119
(901) 683-1215

CERTIFICATE OF SERVICE

I, Gregory D. Cotton, do hereby certify that I have forwarded a copy of the foregoing to Stuart J. Canale, Assistant United States Attorney, Federal Building, 167 N. Main Street, Suite 800, Memphis, Tennessee 38103, via hand delivery and/or US Mail, postage prepaid, this 29 day of July, 2005.



Gregory D. Cotton

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY LSA D.C.

05 AUG 17 AM 9:53

UNITED STATE OF AMERICA,

Plaintiff,

vs.

MICHAEL A. SHORT.

Defendant.

No. 2:04cr-20032-MI

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

AMENDED MOTION TO MODIFY SENTENCE

Comes now, the Defendant, Michael A. Short, by and through his attorney of record, Gregory D. Cotton, and amends the Motion to Modify Sentence heretofore filed by amending his prayer for relief to pray that in the alternative this Honorable Court strike all references in Mr. Short's file to any "enhancement" under Federal Sentencing Guidelines for Possession of a Firearm under the now declared Unconstitutional Guidelines 2D1.1(b)(1).

Respectfully submitted,



Gregory D. Cotton #013679
Attorney for Michael A. Short
6263 Poplar Avenue, Suite 1032
Memphis, Tennessee 38119
(901) 683-1215

CERTIFICATE OF SERVICE

I, Gregory D. Cotton, do hereby certify that I have forwarded a copy of the foregoing to Stuart J. Canale, Assistant United States Attorney, Federal Building, 167 N. Main Street, Suite 800, Memphis, Tennessee 38103, via hand delivery and/or US Mail, postage prepaid, this 15 day of August, 2005.


Gregory D. Cotton